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14/206,067	03/12/2014	David Arthur STURGIS	12784M2	3911

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THE PROCTER & GAMBLE COMPANY
Global IP Services
Central Building, C9
One Procter and Gamble Plaza
CINCINNATI, OH 45202

EXAMINER

JUSTICE, GINA CHIEUN YU

ART UNIT	PAPER NUMBER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID ARTHUR STURGIS, ERIC SHANE HENLEY,
RANDALL DUDLEY GRIFFITH, PHI VAN CHU, and
STEVEN MICHAEL WUJEK, SR.¹

Appeal 2016-008503
Application 14/206,067
Technology Center 1600

Before ULRIKE W. JENKS, JOHN E. SCHNEIDER,
and TIMOTHY G. MAJORS, *Administrative Patent Judges*.

SCHNEIDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to antiperspirant compositions, which have been rejected as anticipated and as obvious. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the Real Party in Interest as The Procter & Gamble Company. Br. 1.

STATEMENT OF THE CASE

The Specification describes an antiperspirant composition in the form of a solid stick which has improved wetness protection. Spec. 1, ll. 26–30.

Claims 1–8 and 10–16 are on appeal. Claim 1 is representative of the rejected claims and reads as follows:

1. A solid stick antiperspirant composition, comprising:
an antiperspirant active comprising a zirconium salt,
wherein the solid stick antiperspirant composition is
substantially or completely free of aluminum zirconium
tetrachlorohydrate glycine having a metal to chloride ratio from
1.2 to 1.3;
a structurant comprising stearyl alcohol;
a surfactant, wherein the surfactant has a melt
temperature that is greater than the crystallization onset
temperature of the solid stick antiperspirant composition; and
wherein the solid stick antiperspirant composition is a
single phase.

The claims have been rejected as follows.

Claims 1–4 and 10–16 have been rejected under 35 U.S.C. § 102
(a)(1) or (a)(2)² as anticipated by Shen.³

Claims 5–8 have been rejected under 35 U.S.C. § 103 as unpatentable
over Shen in view of Popoff.⁴

Claims 1–8 and 10–16 have been rejected under 35 U.S.C. § 103 as
unpatentable over Popoff.

² The present application was filed on or after March 16, 2013 and has been examined under the provisions of the America Invents Act (“AIA”). All citations to statutes are to the provisions of the AIA.

³ Shen et al., US 2007/0003499 A1, published Jan. 4, 2007 (“Shen”).

⁴ Popoff et al., US 2012/0045493 A1, published Feb. 23, 2012 (“Popoff”).

ANTICIPATION

Issue

The issue is whether a preponderance of evidence supports the Examiner's finding that claim 1 is anticipated by Shen.

The Examiner finds that Shen “discloses solid stick antiperspirant compositions comprising 23 wt % aluminum-zirconium pentachlorohydroxyglycine, stearyl alcohol (structurant), and hydrogenated castor wax (a further structurant) in an anhydrous medium.” Non-Final Act. 4 (emphasis omitted). The Examiner finds that the composition disclosed in Shen has a metal to chloride ratio of from 1.2–1.3. *Id.* The Examiner finds that the stearyl alcohol present in Shen also meets the limitation of a surfactant having a melting point greater than the crystallization onset temperature of the solid stick composition. *Id.*

Appellants contend that in the present invention, stearyl alcohol is not a surfactant. Appeal Br. 2. Appellants argue that the claims call for both stearyl alcohol and a surfactant and that to use stearyl alcohol to satisfy both limitations reads one of the limitations out of the claim. Appeal Br. 3.

Analysis

We find Appellants' arguments persuasive.

“Where a claim lists elements separately, ‘the clear implication of the claim language’ is that those elements are ‘distinct component[s]’ of the patented invention.” *Becton, Dickenson and Co. v. Tyco Healthcare Group, LP*, 616 F.3d 1249, 1254 (Fed Cir. 2010) (citing *Gaus v. Conair Corp.*, 363 F.3d 1284, 1288 (Fed. Cir. 2004)).

Claims must not be construed so broadly as to vitiate an express limitation. *See Texas Instruments, Inc. v. International Trade Comm.*, 988 F.2d 1165, 1171, 26 USPQ2d 1018, 1023 (Fed. Cir. 1993) (“[T]o construe the claims in the manner suggested by TI would read an express limitation out of the claims. This we will not do.”).

We agree with Appellants that the claims differentiate between stearyl alcohol and the surfactant in that the claims list them as two separate components. Appeal Br. 2–3. This is consistent with the teachings of the Specification. *Id.* To read stearyl alcohol as satisfying both the stearyl alcohol limitation and the surfactant limitation would improperly disregard one of the two limitations expressly recited in the claim.

Conclusion of Law

We conclude that a preponderance of the evidence does not support the Examiner’s conclusion that claim 1 is anticipated by Shen.

OBVIOUSNESS

Appellants have offered no arguments regarding either rejection based on 35 U.S.C. § 103. We therefore affirm those rejections for the reason given by the Examiner in the Office Action mailed May 21, 2015 and the Answer.

SUMMARY

We reverse the rejection under 35 U.S.C. § 102(a).

We affirm the rejections under 35 U.S.C. § 103.

Appeal 2016-008503
Application 14/206,067

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED